

EXHIBIT 110

Richmond, VA

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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IN RE: PHARMACEUTICAL INDUSTRY) MDL No. 1456
AVERAGE WHOLESALE PRICE) Civil Action No.
LITIGATION) 01-12257-PBS
-----X

THIS DOCUMENT RELATES TO:) Hon. Patti B.
United States of America ex rel.) Saris
Ven-A-Care of the Florida Keys,)
Inc. v. Abbott Laboratories, Inc.)
Civil Action No. 06-11337-PBS;)
United States of America ex rel.)
Ven-A-Care of the Florida Keys,)
Inc. v. Dey, Inc., et al., Civil) DEPOSITION OF
Action No. 05-11084-PBS; and) VA DEPT. OF
United States of America ex rel.) MEDICAL ASSISTANCE
Ven-A-Care of the Florida Keys,) SERVICES by KEITH
Inc. v. Boehringer Ingelheim) T. HAYASHI
Corp., et al., Civil Action No.)
07-10248-PBS) DECEMBER 4, 2008
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<p>1 Videotaped deposition of THE STATE OF</p> <p>2 VIRGINIA DEPARTMENT OF MEDICAL ASSISTANCE</p> <p>3 SERVICES by KEITH T. HAYASHI</p> <p>4</p> <p>5 Richmond, Virginia</p> <p>6 Thursday, December 4, 2008</p> <p>7 9:00 a.m.</p> <p>8</p> <p>9 Videotaped deposition of THE STATE OF VIRGINIA</p> <p>10 DEPARTMENT OF MEDICAL ASSISTANCE SERVICES by KEITH</p> <p>11 T. HAYASHI, held at the law offices of United States</p> <p>12 Attorney's Office, Main Street Centre, 600 East Main</p> <p>13 Street, Suite 1800, Richmond, Virginia 23219, the</p> <p>14 proceedings being recorded stenographically by</p> <p>15 Jonathan Wonnell, a Registered Professional Court</p> <p>16 Reporter and Notary Public of the Commonwealth of</p> <p>17 Virginia (Reg. #7142970), and transcribed under</p> <p>18 his direction.</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>1 A P P E A R A N C E S (CONTINUED)</p> <p>2</p> <p>3 On behalf of Abbott Laboratories, Inc.:</p> <p>4</p> <p>5 DAVID TORBORG, ESQ.</p> <p>6 Jones Day</p> <p>7 51 Louisiana Avenue, N.W.</p> <p>8 Washington, D.C. 20001-2113</p> <p>9 (202) 879-3939</p> <p>10 dstorborg@jonesday.com</p> <p>11</p> <p>12 On behalf of Dey, Inc., Dey, L.P. and Mylan:</p> <p>13</p> <p>14 MARISA A. LORENZO, ESQ.</p> <p>15 Kelley, Drye & Warren LLP</p> <p>16 101 Park Avenue</p> <p>17 New York, New York 10178</p> <p>18 (212) 808-7697</p> <p>19 mlorenzo@kelleydrye.com</p> <p>20</p> <p>21</p> <p>22 ALSO PRESENT: RICK SANBORN, videographer</p>
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<p>1 A P P E A R A N C E S O F C O U N S E L</p> <p>2</p> <p>3 On behalf of the United States of America:</p> <p>4 LAURIE A. OBEREMBT, ESQ.</p> <p>5 U.S. Department of Justice</p> <p>6 Civil Division</p> <p>7 P.O. Box 261, Ben Franklin Station</p> <p>8 Washington, D.C. 20044</p> <p>9 (202) 305-1088</p> <p>10 laurie.oberembt@usdoj.gov</p> <p>11</p> <p>12 On behalf of the Virginia Department of Medical</p> <p>13 Assistance Services:</p> <p>14 USHA KODURU, ESQ.</p> <p>15 JENNIFER L. GOBBLE, ESQ.</p> <p>16 Commonwealth of Virginia</p> <p>17 Office of the Attorney General</p> <p>18 900 East Main Street</p> <p>19 Richmond, Virginia 23219</p> <p>20 (704) 786-4074</p> <p>21 ukoduru@oag.state.va.us</p> <p>22</p>	<p>1 C O N T E N T S</p> <p>2</p> <p>3 WITNESS: KEITH T. HAYASHI PAGE</p> <p>4 Examination By Ms. Oberembt..... 012</p> <p>5 Examination By Mr. Torborg..... 046</p> <p>6 Examination By Ms. Lorenzo..... 262</p> <p>7 Examination By Ms. Oberembt..... 302</p> <p>8 Examination By Mr. Torborg..... 306</p> <p>9</p> <p>10 D O J E X H I B I T S</p> <p>11 NUMBER DESCRIPTION PAGE</p> <p>12 Exhibit DOJ Hayashi 001 - Notice of Continued</p> <p>13 Deposition of the</p> <p>14 State of VA Dept. of</p> <p>15 Medical Assistance</p> <p>16 Services..... 015</p> <p>17 Exhibit DOJ Hayashi 002 - DMAS Report entitled</p> <p>18 "Maximum Allowable Cost</p> <p>19 Program Reimbursement</p> <p>20 Methodology for</p> <p>21 Generic Drugs" dated</p> <p>22 1/1/05..... 035</p>

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<p>1 MS. OBEREMBT: HHD 014-0449.</p> <p>2 BY MR. TORBORG:</p> <p>3 Q. If you could go to that page.</p> <p>4 A. Does it start with "introduction"?</p> <p>5 Q. Yes.</p> <p>6 A. "At HCFA's request?"</p> <p>7 Q. Mm-hmm.</p> <p>8 A. Okay.</p> <p>9 Q. The last paragraph states -- it refers</p> <p>10 to a Barron's article entitled "Hooked On Drugs."</p> <p>11 Do you see that?</p> <p>12 A. I do see that.</p> <p>13 Q. Do you know if anyone at DMAS reviewed</p> <p>14 a copy of that at or around the time it was</p> <p>15 published?</p> <p>16 A. The "Hooked On Drugs"?</p> <p>17 Q. Yes.</p> <p>18 A. I do not know that.</p> <p>19 Q. Did you ask Mr. Shepherd, Mr. Cohen or</p> <p>20 Ms. Rollins whether they reviewed that report?</p> <p>21 A. No, I did not.</p> <p>22 Q. It fair to say, though, that if DMAS</p>	<p>1 this doesn't refresh your recollection of whether</p> <p>2 or not you asked Mr. Shepherd or any other</p> <p>3 employees whether they -- former employees --</p> <p>4 whether they reviewed this document?</p> <p>5 A. No, I did not ask that.</p> <p>6 Q. Go to the Bates page that ends -- the</p> <p>7 bottom one R-2, that ends with 55?</p> <p>8 A. Mm-hmm.</p> <p>9 Q. The last sentence of the first column</p> <p>10 on that page states "This sampling showed that</p> <p>11 for single-source drugs still enjoying patent</p> <p>12 protection, such as Bristol-Myers Squibb's Taxol</p> <p>13 or Platinol, true average prices are generally 10</p> <p>14 to 20 percent below published AWP's."</p> <p>15 MS. OBEREMBT: Objection. That's not</p> <p>16 what it says.</p> <p>17 MR. TORBORG: What did I say?</p> <p>18 MS. OBEREMBT: You said true average</p> <p>19 prices instead of true wholesale prices.</p> <p>20 MR. TORBORG: True wholesale prices.</p> <p>21 BY MR. TORBORG:</p> <p>22 Q. Let me start over. "This sampling</p>
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<p>1 received a copy of this report, as the language I</p> <p>2 indicated earlier suggests that it does, they</p> <p>3 were made aware of this Barron's article?</p> <p>4 MS. OBEREMBT: Objection.</p> <p>5 A. I cannot say that. I don't know if</p> <p>6 they got this report.</p> <p>7 Q. You would agree with me that HCFA</p> <p>8 indicated that they intended to share the report</p> <p>9 with DMAS, right?</p> <p>10 MS. OBEREMBT: Objection.</p> <p>11 A. That was their intention.</p> <p>12 MR. TORBORG: I'd like to mark as our</p> <p>13 next exhibit, Abbott Hayashi 14 --</p> <p>14 (Exhibit Abbott Hayashi 014 was</p> <p>15 marked for identification.)</p> <p>16 BY MR. TORBORG:</p> <p>17 Q. Mr. Hayashi, this is a copy of the</p> <p>18 Barron's "Hooked On Drugs" article that was</p> <p>19 referenced in the previous document I showed you.</p> <p>20 Do you see that?</p> <p>21 A. Yes, I do.</p> <p>22 Q. And having a chance to look at this,</p>	<p>1 showed that for single-source drugs still</p> <p>2 enjoying patent protection, such as Bristol-Myers</p> <p>3 Squibb's Taxol or Platinol, true wholesale prices</p> <p>4 are generally 10 to 20 percent below published</p> <p>5 AWP's." Do you see that?</p> <p>6 A. Yes, I do.</p> <p>7 Q. And then in the next sentence it says</p> <p>8 "But for generic drugs nearly every</p> <p>9 manufacturer's price was 60 to 85 percent below</p> <p>10 the published average wholesale price." Do you</p> <p>11 see that?</p> <p>12 A. Yes, I do.</p> <p>13 Q. Do you know if from 1989 through 2004</p> <p>14 Virginia was aware that for generic drugs most</p> <p>15 manufacturer prices were 60 to 85 percent below</p> <p>16 published average wholesale price?</p> <p>17 MS. OBEREMBT: Objection.</p> <p>18 MS. KODURU: Objection.</p> <p>19 A. I do not know that.</p> <p>20 Q. You don't know either way?</p> <p>21 A. Virginia, no.</p> <p>22 Q. You recall from your personal</p>

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<p>1 experience that it was generally known and</p> <p>2 understood in the industry that there was a</p> <p>3 larger discount for generic drugs than sole-</p> <p>4 source drugs, right?</p> <p>5 MS. OBEREMBT: Objection.</p> <p>6 MS. KODURU: Objection.</p> <p>7 A. In my personal experience, that is</p> <p>8 correct.</p> <p>9 Q. If you would go to the next paragraph</p> <p>10 it says "The pricing unreality is even worse for</p> <p>11 intravenous nutritionals and solutions, a</p> <p>12 category dominated by Abbott Laboratories and</p> <p>13 Baxter International. Catalog wholesale prices</p> <p>14 for these items are on average 80 to 93 percent</p> <p>15 below those companies' AWP's." Do you see that?</p> <p>16 A. Yes, I do.</p> <p>17 Q. Mr. Hayashi, did DMAS have an</p> <p>18 understanding that there was an average</p> <p>19 difference between average wholesale price and</p> <p>20 catalog prices of 80 to 93 percent --</p> <p>21 MS. OBEREMBT: Objection.</p> <p>22 Q. I'm sorry. I said that wrong.</p>	<p>1 we take a break for lunch.</p> <p>2 MR. TORBORG: Okay.</p> <p>3 THE VIDEOGRAPHER: Off the record at</p> <p>4 12:21.</p> <p>5 (Whereupon, at 12:21 p.m. a lunch</p> <p>6 recess was taken.)</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
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<p>1 Was DMAS aware that for IV nutritionals</p> <p>2 and solutions that wholesale prices were on</p> <p>3 average 80 to 93 percent below Abbott and</p> <p>4 Baxter's AWP's?</p> <p>5 MS. OBEREMBT: Objection.</p> <p>6 MS. KODURU: Objection.</p> <p>7 A. I don't believe Virginia Medicaid knew</p> <p>8 that.</p> <p>9 Q. Do you know either way?</p> <p>10 A. No.</p> <p>11 Q. So you said you don't believe they knew</p> <p>12 it, but you don't know either way?</p> <p>13 A. No, I do not know.</p> <p>14 Q. Did you ask Mr. Shepherd about that?</p> <p>15 A. No, I did not.</p> <p>16 Q. Did you ask any employees who were at</p> <p>17 DMAS from 1989 through 2001 about that?</p> <p>18 A. No, I did not.</p> <p>19 MR. TORBORG: I'm about ready to go to</p> <p>20 topic 6. I can keep going. I'm fine. Or I can</p> <p>21 take a break. So I leave it up to --</p> <p>22 MS. OBEREMBT: It's 12:30. Why don't</p>	<p>1 AFTERNOON SESSION</p> <p>2 (1:21 p.m.)</p> <p>3</p> <p>4 Whereupon,</p> <p>5 KEITH T. HAYASHI,</p> <p>6 the witness testifying at the time of recess,</p> <p>7 having been previously duly sworn, was further</p> <p>8 examined and testified as follows.</p> <p>9</p> <p>10 EXAMINATION RESUMED BY COUNSEL FOR</p> <p>11 ABBOTT LABORATORIES</p> <p>12 BY MR. TORBORG:</p> <p>13 THE VIDEOGRAPHER: On the record at</p> <p>14 1:29.</p> <p>15 Q. Welcome back, Mr. Hayashi.</p> <p>16 A. Thank you.</p> <p>17 Q. Let me ask you first, did you have any</p> <p>18 conversations with counsel over the lunch break</p> <p>19 relating to your deposition testimony?</p> <p>20 A. Yes, I did.</p> <p>21 Q. Okay. What did you talk about?</p> <p>22 A. We talked about some of my responses</p>

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